



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Environmental  
Conservation

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February 12, 2014

Dennis McLerran  
Regional Administrator  
U.S. EPA Region 10  
1200 Sixth Avenue  
Seattle WA 98101

Significant Impact Levels (SILs)/Significant Monitoring Concentration (SMC)

Dear Mr. McLerran:

The Alaska Department of Environmental Conservation (ADEC) submits this letter in response to the Environmental Protection Agency (EPA), Region 10's (R10's) concerns about the PM-2.5 Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) provisions in ADEC's Air Quality Regulations, 18 AAC 50, which have been submitted to R10 for State Implementation Plan approval.

ADEC adopted the PM-2.5 SIL provisions in 40 CFR 52.21(k)(2) and the PM-2.5 SMC provisions in 40 CFR 52.21(i)(5)(i)(c), as revised as of July 1, 2011, in the 18 AAC 50 regulations that went into effect on January 4, 2013. ADEC submitted these 18 AAC 50 revisions to R10 for SIP approval on January 24, 2013. However, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 705 F.3d 458, vacated and remanded the provisions at 40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2) (concerning implementation of the PM-2.5 SILs) and vacated the provisions at 40 CFR 51.166(i)(5)(i)(c) and 40 CFR 52.21(i)(5)(i)(c) (adding the PM-2.5 SMC) that were promulgated as part of the 2010 PM-2.5 PSD Rule.<sup>1</sup> On December 9, 2013, EPA published a Federal Register notice (78 FR 73698) amending its regulations to remove the vacated and remanded PM-2.5 SILs and the vacated PM-2.5 SMC provisions from the Code of Federal Regulations.

Therefore, at this time, ADEC withdraws the PM-2.5 SIL provisions found in 40 CFR 52.21(k)(2) and the PM-2.5 SMC provisions found in 40 CFR 52.21(i)(5)(i)(c), as adopted by reference in 18 AAC 50.040(h), effective January 4, 2013, from our request to R10 for approval of the SIP submittal of January 24, 2013.

ADEC made additional revisions to 18 AAC 50.215(d) regarding the ambient standard and Class II SILs as follows:

- effective September 17, 2011 (submitted October 17, 2011)
  - included under Table 5 the annual and 24-hour PM-2.5 SILs and a 1-hour sulfur dioxide (SO<sub>2</sub>) SIL in a general listing of the ambient standard and Class II SILs and changed "time" to "period" in the text of 18 AAC 50.215(d);

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<sup>1</sup> "Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)," 75 FR 64864 (October 20, 2010).

- effective September 14, 2012 (submitted December 6, 2012)
  - revised the discussion concerning the method by which modeled concentrations should be compared to SILs; and
- effective January 4, 2013 (submitted January 24, 2013)
  - added the two PM-2.5 averaging periods to the general discussion regarding the comparison of modeled concentrations to the PM-2.5 SILs and included a 1-hour nitrogen dioxide (NO<sub>2</sub>) SIL under Table 5 in a general listing of the ambient standard and Class II SILs.

An additional revision to 18 AAC 50.215(d), effective July 25, 2008, was solely a formatting change to Table 5. Therefore, at this time, ADEC withdraws from our requests to R10 for SIP approval the revisions to 18 AAC 50.215(d) which became effective on September 17, 2011 (submitted October 17, 2011); September 14, 2012 (submitted December 6, 2012); and January 4, 2013 (submitted January 24, 2013).

ADEC realizes that it will need to revise the general SIL language in 18 AAC 50.215(d). However, ADEC is also aware that EPA intends to issue guidance soon that will address the court's concerns about PSD modeling applications. ADEC therefore plans to review EPA's upcoming guidance to determine whether similar language could be proposed for 18 AAC 50.215(d). If not, ADEC intends to develop and propose alternative language that would allow the SILs to be appropriately used in both of Alaska's minor and major new source review permit programs and to begin the public notice and comment process at the first opportunity.

In light of the above-described court decision, and until ADEC has revised its regulations, ADEC permitting staff is advising permit applicants to not rely on the provisions regarding Class I PM-2.5 SILs and SMC in preparing applications. ADEC is allowing continued use of the Class II and ambient standard SILs in 18 AAC 50.215(d) – which is consistent with EPA guidance – but is informing applicants regarding the court's concern.<sup>2</sup> In the PSD Modeling Protocol Outline for PSD Permit Applications, available to applicants on our Modeling webpage at <http://dec.alaska.gov/air/ap/modeling.htm>, ADEC footnotes the discussions of SILs (footnote 2) and SMC (footnote 3) on page 11 as follows:

<sup>2</sup> In January 2013, the District of Columbia Circuit Court of Appeals remanded the federal PM-2.5 SILs back to EPA. While the State SIL provisions in 18 AAC 50.215(d) still stand, the PM-2.5 SILs could nevertheless be subject to challenge due to this federal ruling. Regulatory changes may be forthcoming from EPA and/or ADEC. Check the EPA and ADEC websites for possible updates regarding this issue.

<sup>3</sup> In January 2013, the District of Columbia Circuit Court of Appeals vacated the PM-2.5 SMC.

In the Modeling Review Procedures Manual (rev. June 30, 2013), also available on the Modeling webpage, ADEC discusses the revocation of the PM-2.5 SILs (footnote 3 on page 13) and SMC (fourth paragraph on page 33). Although this document is used by staff, it also is available to the public in order that applicants can see how ADEC staff is addressing the vacature and remand of these provisions when reviewing modeling submissions. The relevant portions of the Manual read as follows:

<sup>3</sup> In January 2013, the District of Columbia Circuit Court of Appeals revoked the PM-2.5 SIL. Regulatory changes may be forthcoming from EPA and/or ADEC. Check EPA and

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<sup>2</sup> EPA does not prohibit States from using the SILs. In its guidance dated March 2013, EPA wrote, "In the interim, the EPA believes permitting authorities may continue to apply SILs for PM<sub>2.5</sub> to support a PSD permitting decision, but permitting authorities should take care to ensure that SILs are not used in a manner that is inconsistent with the requirements of Section 165(a)(3) of the CAA." (page 11).

ADEC websites periodically and before you begin a review to see if new regulations have been put in place.

(p. 33) The third method is to submit a modeling analysis that shows the project impacts are below the SMC for each of the PSD-triggered pollutants. If the predicted impact is less than the SMC for that pollutant, then the project impact may be considered too small to accurately detect with current monitoring techniques. ADEC may then generally consider the SMC analysis as adequate for meeting the pre-construction monitoring requirement. However, the SMC for PM-2.5 was vacated on January 22, 2013 by the District of Columbia Circuit Court. Therefore, projects that trigger PSD review for PM-2.5 must include [ ] pre-construction PM-2.5 data, regardless of the project impacts.

ADEC will continue to work with PSD applicants to make sure the Court's SIL concerns are addressed in situations where a substantial portion of the PM-2.5 NAAQS or increment is known to be consumed. Additionally, ADEC is requiring all PSD applicants who have triggered the PM-2.5 requirements to submit ambient PM-2.5 monitoring data in accordance with the Clean Air Act requirements. Applicants may no longer submit a PM-2.5 SMC demonstration in lieu of providing ambient PM-2.5 data.

If you have any questions or require additional information, please contact Alice Edwards at (907) 465-5105.

Sincerely,



Larry Hartig  
Commissioner

cc: Debra Suzuki, EPA Region 10  
Kristin Hall, EPA Region 10  
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Alice Edwards, Division of Air Quality, ADEC  
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